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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHRYSLER CORPORATION, ET AL.,

Petitioners,

v.

STANLEY SMOLAREK and RALPH FLEMING,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF AMICUS CURIAE OF THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., IN SUPPORT OF THE PETITION

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The Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") respectfully submits this brief as amicus curiae in support of the petition for a writ of certiorari filed by Chrysler Corporation.[1]

[1] The written consents of the parties to the filing of this brief have been filed with the Clerk.

INTEREST OF THE AMICUS CURIAE

MVMA is a trade organization whose member companies build 98% of all motor vehicles produced in the United States and numerous other products. MVMA members include Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Manufacturing, Inc.; Navistar International Transportation Corp.; PACCAR, Inc.; and Volvo North American Corporation. The MVMA member companies employ over 1.2 million workers; a substantial proportion of those employees are represented by unions and covered by collective bargaining agreements. The collective bargaining agreements covering most of these employees are the product of industry-wide "pattern bargaining." As a result, the employment of most of the employees of MVMA members is governed by agreements containing handicap discrimination clauses and grievance procedures that are virtually identical to those involved in this case.

This case presents an issue of great importance to MVMA members and to other employers throughout the country whose employees are covered by collective bargaining agreements. The court of appeals held that the handicap discrimination claims of two Chrysler employees were not pre-empted by Section 301 of the Labor Management Relations Act even though those claims were based on rights conferred under a collective bargaining agreement and ultimately would require interpretation of that agreement. The decision conflicts with the important federal policies favoring resolution of labor disputes by arbitration and application of a uniform body of federal law to claims based on collective bargaining agreements. As such, the court of appeals' decision threatens to disrupt the labor relations of MVMA members and other em-

ployers and to deprive employers and unions of the full benefit of their agreements to resolve all contractual disputes through contractual procedures culminating in final and binding arbitration.

STATEMENT

As the court of appeals held (Pet. App. 2a), "[t]hese combined cases present close and difficult questions regarding whether §301 of the Labor Management Relations Act pre-empts plaintiffs' actions claiming violations of Michigan's Handicappers' Civil Rights Act ('HCRA') * * *." Two Chrysler employees, Stanley Smolarek and Ralph Fleming, sued Chrysler claiming that the company's failure to place them in positions consistent with their medical restrictions violated HCRA. It is beyond dispute that HCRA does *not* require accommodation of job-related handicaps (i.e., handicaps related to the employee's ability to perform his job). *Carr* v. *General Motors Corp.*, 425 Mich. 313, 389 N.W.2d 686 (1986). It is also beyond dispute that the collective bargaining agreement between Chrysler and the United Automobile Workers ("UAW") does require some accommodation of job-related handicaps. Pet. 3. Yet Smolarek and Fleming contend that Chrysler's alleged failure to accommodate their job-related handicaps (as required only by the collective bargaining agreement) violated HCRA (which itself does not require such accommodation). Reversing the district court decision in each case by an 8 to 7 vote, the court of appeals held that the HCRA claims were not pre-empted by §301. That conclusion is directly contrary to this Court's unanimous decision in *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985), and conflicts with the decisions of other circuits and with the important federal policies favoring resolution of labor dis-

putes through arbitration and requiring application of a uniform body of federal law to such claims.

1. Stanley Smolarek, a Chrysler employee since 1953 and a UAW member, has suffered from a seizure disorder for over thirty years. Over those years, certain medical restrictions were placed on his on-the-job activities. Chrysler continued to employ him despite those restrictions. In October 1984, Smolarek suffered a seizure while at work. He was absent from work for two weeks and, upon his return, was told that there were no jobs available consistent with his medical restrictions. Pet. App. 2a-3a.

Rather than file a grievance claiming violation of the provisions of the collective bargaining agreement requiring "reasonable accommodation [of] an employee's handicap" (Pet. 3), Smolarek filed suit in state court claiming that Chrysler violated HCRA by failing to reinstate him to "his former position or another position consistent with his medical restrictions." Pet. App. 20a. Smolarek's prayer for relief asked the court to require Chrysler to "accommodate plaintiff's handicap by providing him with work which would fit his particular needs or handicap and otherwise accommodate plaintiff so that he can remain in the active employ of defendant." Pet. App. 45a.

Chrysler removed the suit to federal court on the ground that Smolarek's complaint presented a federal question under §301. Denying Smolarek's motion to remand, the district court held that Smolarek's HCRA claims were pre-empted by §301 and dismissed the suit for failure to exhaust the contractual remedies. Pet. App. 3a.

2. Ralph Fleming began working at Chrysler in 1976. Like Smolarek, he was a member of the UAW and was represented by that union for collective bargaining purposes. In 1983, Fleming suffered "severe and permanent

injuries" in an automobile accident. He returned to work at Chrysler after a year of disability leave, but he re-injured himself as he was leaving work in August 1984. He suffered from "loss of balance, severe headaches, muscle spasms in his back, and nausea." Pet. App. 3a. He returned to work again after an additional period of leave, but his "physical condition * * * precluded him from performing his assigned duties." Pet. App. 48a. He requested that his union attempt to secure an accommodation of his handicap but before that was accomplished he was placed on indefinite layoff as part of a reduction in force at the Chrysler plant where he worked. Pet. App. 49a.

Fleming claimed that he was not really laid off, but was actually improperly discharged. The UAW filed a grievance on his behalf which was pending when Fleming voluntarily quit his employment as part of a settlement of his workers' compensation claim against Chrysler. Pet. App. 49a. Fleming then brought this suit in state court, claiming that Chrysler violated HCRA by "[f]ailing to suggest and/or implement reasonable accommodations so as to allow [him] to work despite his physical determinable handicap * * *." Pet. App. 22a. Chrysler removed the case to federal court and the court granted Chrysler's motion for summary judgment, holding that Fleming's HCRA claims were pre-empted by Section 301 and that Fleming had failed to exhaust his contractual remedies.[2]

3. The two cases were consolidated on appeal. The court of appeals, sitting *en banc*, reversed the district

[2] In addition to the HCRA claim, Fleming's complaint alleged three other state law causes of action. The district court denied Fleming's motion to remand on the ground that two of those *other* claims stated federal questions. Fleming did not appeal the dismissal of those two claims, so the propriety of the removal of Fleming's action was not at issue in the court of appeals and is not before this Court.

court's pre-emption holdings, with seven of the fifteen judges dissenting.[3] The court characterized this Court's decision in *Lingle* v. *Norge Division of Magic Chef, Inc.*, 108 S. Ct. 1877 (1988), as approving "the Seventh Circuit's recognition that '§301 does not pre-empt state anti-discrimination laws, * * *.' " Pet. App. 11a. Starting from that broad reading of *Lingle*, the court of appeals separately examined Smolarek's and Fleming's claims to determine whether they presented any special circumstances justifying a departure from the "rule". The court acknowledged at the outset that under settled Michigan law, "a plaintiff who concededly cannot perform the duties of a particular job and who claims that his employer must accommodate him does not state a claim under HCRA." Pet. App. 11a.

Smolarek based his claim in substantial part on Chrysler's failure to "accommodate [his] handicap" and to reinstate him "to his former position or another position consistent with his medical conditions." Although it was undisputed that he could only work subject to medical restrictions, the court of appeals held that because an employee could make out a prima facie case under HCRA without relying on rights under the collective bargaining agreement (if he could show that he was capable of working at his former job), Smolarek's claim was not pre-empted (Pet. App. 14a):

> Smolarek's complaint makes reference to his reporting to work "to his former position," and that "defendant has refused to return plaintiff to his former position" in violation of HCRA. * * * Only if found not capable of working at this former job would the court be concerned with Smolarek's alternative contention that he be placed in "another position consistent with his medical restrictions." That Chrysler may defend this latter alternative claim by reference to its re-

[3] An earlier panel opinion was vacated by the court's order granting the motion for rehearing *en banc*. Pet. App. 28a.

> sponsibilities under the collective bargaining agreement in respect to reasonable accommodation of Smolarek's "medical restrictions" is, in our view, no basis to hold that §301 preemption is mandated under these circumstances.

Smolarek's complaint on its face alleged that Chrysler was required to accommodate his job-related handicap, and it is clear that accommodation of such handicaps is not required by the HCRA but may be required by the union contract. But the court held that the issue of accommodation under the collective bargaining agreement would arise only as a defense to Smolarek's claim. Relying on *Caterpillar Inc.* v. *Williams*, 482 U.S. 386 (1987), the court held that even if it is governed by §301, under the "well-pleaded complaint" doctrine a contract claimed raised as a defense does not warrant removal of a state case to federal court.[4]

Turning to Fleming's claims, the court of appeals acknowledged that Fleming was seeking an accommodation of his job-related handicap (i.e., "work consistent with his medical restrictions"; Pet. App. 15a), but held that Fleming could make out a prima facie case under HCRA if he showed that Chrysler's actions were discriminatorily motivated. Even though HCRA does not require such accommodation, the court held that Fleming could establish liability under the statute if he could show that "Chrysler took adverse actions against him and * * * that the actions were motivated by his handicap." *Ibid.* "It is not necessary to decide at the outset whether or not Chrysler's

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[4] Because it held that it was raised as a defense, the court did not address the merits of Chrysler's argument that Smolarek's accommodation claim was pre-empted by §301. But it indicated that if it did reach that issue it would apply the same analysis it used in holding that Fleming's claim was not pre-empted. Pet. App. 14a-15a & n.3.

interpretation of the agreement is correct as a matter of federal labor law. The question is a factual one: what was Chrysler's motivation?" Pet. App. 16a. In the court of appeals' view, that question did not require contract interpretation and was "sufficiently 'independent' of the collective bargaining agreement to escape §301 pre-emption." *Ibid.*

4. Seven of the fifteen circuit judges dissented and joined an opinion by Judge Kennedy. The dissenting judges criticized the majority for failing to look beyond the pleadings to the reality of the respondents' claims. Pet. App. 19a. They would have held that Smolarek's claim was pre-empted insofar as it sought accommodation of his job-related handicap (Pet. App. 20a-21a):

> At the time of removal, Smolarek claimed a right to reinstatement to "his former position or another position consistent with his medical restrictions. * * *" To the extent that Smolarek asks for reinstatement to another position, his claim is clearly preempted. There is no right independent of the collective bargaining agreement to be reinstated to another job consistent with one's medical disability under HCRA.

Similarly, to the extent that Fleming "claim[ed] a right to reinstatement to another position," the dissenting judges believed his claim was also pre-empted. Pet. App. 22a. "The only source of Chrysler's duty to [accommodate Fleming] is the collective bargaining agreement." *Ibid.*

REASONS FOR GRANTING THE PETITION

The court of appeals' decision in this case, much like the Wisconsin Supreme Court's decision in *Allis-Chalmers Corp.* v. *Lueck,* would allow state court judges, applying state law, to resolve disputes over collective bargaining agreement provisions that should be resolved by arbitrators applying uniform federal law and the "law of the shop." As the sharp division among the circuit judges in this case demonstrates, the courts have had considerable difficulty applying *Lingle* and have reached conflicting results. See also, *Machinists Local 437* v. *United States Can Co.*, 150 Wisc. 2d 479, 441 N.W.2d 710 (Wisc. 1989) (a 4-3 decision of the Wisconsin Supreme Court); *Cuffe* v. *General Motors Corp.*, ____ N.W.2d ____ (Mich. App. Oct. 2, 1989) (holding that an HCRA claim was pre-empted by §301); *Metro* v. *Ford Motor Co.*, ____ N.W.2d ____ (Mich. App. Aug. 25, 1989) (expressly rejecting the Sixth Circuit's holding in this case). In *Cuffe* and *Metro,* the Michigan Court of Appeals held that handicap discrimination claims that were virtually identical to those raised in this case were pre-empted. This Court should grant the petition to clarify the proper scope of *Lingle* and to reaffirm that §301 pre-empts state law actions relating to rights grounded in collective bargaining agreements.

A. The Court Of Appeals' Decision Conflicts With This Court's Repeated Holding That Disputes Dependent On The Terms Of Collective Bargaining Agreements Must Be Resolved Solely Under Federal Law.

1. Section 301 of the Labor Management Relations Act, 29 U.S.C. §185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in

> an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties.

Although state courts have concurrent jurisdiction over §301 suits, *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), the "dimensions of §301 require * * * that substantive principles of federal labor law must be paramount in the area covered by the statute [so that] issues raised in [§301] suits * * * [are] decided according to the precepts of federal labor policy." *Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 103 (1962).

Federal labor policy requires that "doctrines of federal labor law uniformly * * * prevail over inconsistent local rules." *Id.*, at 104. The Court explained the reason for this rule as follows (*id.*, at 103-104):

> [T]he subject matter of §301(a) 'is peculiarly one that calls for uniform law.' * * * The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation * * * [and] might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

The Court therefore held that suits alleging violations of collective bargaining agreements must be examined under

uniform federal law developed under §301 and that state lawsuits dependent on the terms of such agreement are pre-empted.

More recently, in *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. at 210, the Court held that '[i]f the policies that animate §301 are to be given their proper range * * * the pre-emptive effect of §301 must extend beyond suits alleging contract violations." In order to serve "[t]he interests in interpretive uniformity and predictability * * *, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from that agreement, must be resolved by reference to uniform federal law * * *." *Id.*, at 211. Federal law must be applied unless the state cause of action is independent of the rights established by the collective bargaining agreement:

> [S]tate-law rights and obligations that do not exist independently of private agreements, and that as a result can be waived or altered by agreement of private parties, are pre-empted by those agreements. Our analysis must focus, then, on whether the [state cause of action] as applied here confers nonnegotiable state-law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the [state] claim is inextricably intertwined with consideration of the terms of the labor contract. If the state * * * law purports to define the meaning of the contract relationship, that law is pre-empted.

Id. at 213 (footnote and citation omitted).

The Court reiterated these concerns yet again in *Electrical Workers* v. *Hechler*, 481 U.S. 851 (1987), and in *Lingle* v. *Norge Division of Magic Chef, Inc.* In *Hechler*, the plaintiff alleged that her union was negligent in fulfilling its duty to ensure a safe workplace. Although her action for negligence was purely a state law cause of action, the Court held that it was pre-empted by §301:

> Respondent's allegations of negligence assume significance if—and only if—the Union, in fact, had assumed the duty of care that the complaint alleges the Union breached. * * * In order to determine the Union's tort liability * * * a court would have to ascertain, first, whether the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure that Hechler was provided a safe workplace, and, second, the nature and scope of that duty, that is, whether, and to what extent, the Union's duty extended to the particular responsibilities alleged by respondent in her complaint. Thus, in this case, as in *Allis-Chalmers*, it is clear that "questions of contract interpretation . . . underlie any finding of tort liability." 471 U.S., at 218. The need for federal uniformity in the interpretation of contract terms therefore mandates that here, as in *Allis-Chalmers*, respondent is precluded from evading the pre-emptive force of §301 by casting her claim as a state-law tort action.

In *Lingle*, the Court held that the plaintiff's state law claim that she had been discharged in retaliation for filing a workers' compensation claim was not pre-empted by §301 because that claim was not at all related to or dependent upon the collective bargaining agreement. Although the plaintiff could have challenged her termination under the just cause provision of the union contract, the state law claim and the contract claim operated in parallel, and the state law claim was not at all dependent on any provision of the contract. 108 S. Ct. at 1883. The Court repeated the settled rule "that interpretation of collective-bargaining agreements remains firmly in the arbitral realm; judges can determine questions of state law involving labor-management relations only if such questions do not require construing collective-bargaining agreements." *Id.* at 1884.

2. The court of appeals' decision in this case is contrary to those longstanding principles. The court gave dif-

ferent reasons for concluding that the claims of Smolarek and those of Fleming were not pre-empted. As to Smolarek, the court held that his claim "that Chrysler violated its duties under HCRA by refusing to return him 'to his former position or another position consistent with his medical restrictions' " (Pet. App. 11a) was not pre-empted because it included a claim that he be restored to his former position, and not solely a claim that his handicap be accommodated by placing him in "another position consistent with his medical restrictions." In the court's words, "[o]nly if found not capable of working at his former job would the court be concerned with Smolarek's alternative contention that he be placed in 'another position * * *.' " *Id.*, at 14a.

The court's conclusion misses the mark. Smolarek's claim that he should be given "another position" may be pleaded in the alternative, but it is nonetheless an alternative claim that is pre-empted by §301 and the court should have so held. It is beyond dispute that HCRA does not require an employer to accommodate an employee's handicap by placing him in "another position consistent with his medical restrictions." *Carr* v. *General Motors Corp.*, 425 Mich. 313, 389 N.W.2d 686 (1986). Any right to such accommodation Smolarek may have had stems not from the HCRA, but from the collective bargaining agreement and therefore must be examined under §301. As the seven dissenting circuit judges pointed out, "[t]here is no right independent of the collective bargaining agreement to be reinstated to another job consistent with one's medical disability under the HCRA." Pet. App. 21. Although the eight circuit judges in the majority acknowledged that there was no right to such accommodation under HCRA (Pet. App. 11a), they nevertheless incorrectly held that the state law claims could go forward.

Moreover, Smolarek was undeniably seeking special accommodation of his medical restrictions even if he were

returned to his former job. Smolarek claimed that Chrysler had previously accommodated his medical restrictions and should do so again. Pet. App. 2a-3a. He asked the court to order Chrysler to "accommodate [his] handicap by providing him with work which would fit his particular needs or handicap and otherwise accommodate [him] so that he can remain in the active employ of [Chrysler]." Pet. App. 45a. Again, such an accommodation of a job-related handicap could be required only by the union contract, not by state law.

In these circumstances, it is clear that Smolarek's claim is not truly independent of the collective bargaining agreement. Chrysler and Smolarek disagree as to the "legal consequences [that] flow from * * * that agreement." Such a disagreement "must be resolved by reference to uniform federal law * * *." *Lueck*, 471 U.S. at 211.

3. As to respondent Fleming, the court of appeals based its holding that the HCRA claim was not pre-empted on what the dissent characterized (Pet. App. 24a) as a "floor of rights" theory which turned solely on motivation:

> Under this theory, [respondents] posit that although an employer need not provide for a right to reinstatement following a disability, if it does provide that right—either through the collective bargaining agreement or voluntarily—it must not discriminate in giving that right to all groups.

Thus the majority opinion (Pet. App. 15a-16a) held that the success of respondent's claim depends on whether Chrysler was "motivated by his handicap" and that "Chrysler must show that its actions were motivated by some factor other than [respondent's] handicap". Under the court's theory, even though HCRA does not require accommodation, Chrysler would violate the statute if it based its decision not to accommodate on the respondents' handicaps, and

that violation would be independent of any contractual right.[5]

This "floor of rights" theory has some superficial appeal. It is commonly accepted that certain actions an employer might ordinarily have every right to take become unlawful if they are taken because of such prohibited considerations as race, or sex, or union activity. But on closer examination, the theory does not hold up in this context. By requiring only that employers not discriminate against handicapped workers when the handicap is "unrelated to the individual's ability to perform the duties of a particular job or position," and thus by not requiring accommodation of job-related handicaps, HCRA permits employers to "discriminate" on the basis of handicap when that handicap *is* related to job ability. In these circumstances, it makes absolutely no sense to say that "Chrysler must show that its actions [i.e., its failure to accommodate] were motivated by some factor other than [the respondents'] handicap[s]." Chrysler had every right under HCRA to base its refusal to accommodate on respondents' handicaps. The only right respondents might have had to accommodation of their job-related handicaps was a right under the union contract. And that right can be addressed only under §301.

Moreover, it is clear that the question of discriminatory motivation is not independent of the collective bargaining agreement and would require interpretation of that agreement. To determine whether Chrysler discriminated against Fleming by not affording him the same contractual rights as it would give to non-handicapped workers, the court must examine the scope of those contractual rights. But

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[5] The court indicated that it would apply the same analysis to Smolarek's claim if it were required to reach the merits of Chrysler's pre-emption "defense." Pet. App. 14a-15a & n.3.

such an inquiry would require interpretation of the express and implied rights under the collective bargaining agreement and would directly contravene the fundamental federal policies underlying §301 and this Court's long-standing pre-emption decisions. It is also clear that the claimed right to accommodation of job-related handicaps "can be waived or altered by agreement of [the] parties." *Lueck*, 471 U.S. at 213. Such rights are not independent of labor contracts and can be pursued only under §301.

The court of appeals' decision would thus allow state courts and juries to interpret the provisions of collective bargaining agreements and it would permit them to do so with reference to state rather than federal law. The decision thus substantially undermines the important federal policy requiring application of a uniform, nationwide body of law to cases dependent on the terms of union contracts. It also contravenes the federal policy favoring resolution of labor contract disputes through contractual grievance procedures culminating in final and binding arbitration. This Court should grant the petition to protect the important federal interests reflected in those policies.

B. The Court Of Appeals' Holding That Chrysler's Motivation Presented An Issue Independent From The Terms Of The Union Contract Conflicts With This Court's Decision In *Lueck* And With The Decisions Of Several Other Courts Of Appeals.

As this Court has repeatedly held, in cases like this one federal labor relations policy "mandate[s] resort to federal rules of law in order to ensure uniform interpretation of collective-bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes." *Lingle*, 108 S. Ct. at 1880. Consequently, the Court has required application of federal law not only when the asserted claim directly requires interpretation of a collective bargaining agreement, but also where state

claims are intertwined with contract issues and are not truly independent of those issues. *Lueck*, 471 U.S. at 210-211. When contract issues are involved, the dispute must be resolved under §301. *Ibid.*

The court of appeals in this case, by "wear[ing] blinders" (Pet. App. 23a) and ignoring the true nature of respondents' claims, has demonstrated how easily a court might misinterpret *Lingle* to permit encroachment of state law on necessarily federal issues. In *Lingle* this Court decided that the state claim was not pre-empted because it could be raised even in the absence of a collective bargaining agreement. The fact that there may have been parallel rights under the agreement did not diminish the fact that the state claim was fully independent of any contractual rights. Similarly, the Michigan Handicapper's Civil Rights Act might confer rights that are fully independent of contractual rights in other cases. But in this case, the right to accommodation sought by respondents was not independent of the union contract. In fact, it was a right that was available, if at all, *only* under the collective bargaining agreement. And the court of appeals cannot negate that fact by focusing on Chrysler's motivation.

The court of appeals reasoned that the critical question at least as to Fleming's claim was "[w]hat was Chrysler's motivation?" Pet. App. 16a.[6] Even if the right to accommodation was based solely on the collective bargaining agreement, under the court's theory it would not be necessary to interpret that contract. The court would be presented with " 'purely factual questions' relating to the conduct and motivation of the employer." *Id.*, at 15a. And those questions would be "sufficiently 'independent' of the

[6] The same reasoning would apparently apply to Smolarek's accommodation claim if the court were required to decide whether that claim was pre-empted by §301. Pet. App. 14a-15a & n.3.

collective bargaining agreement to escape §301 pre-emption." *Id.*, at 16a.

That is exactly the kind of reasoning that this Court unanimously rejected in *Allis-Chalmers Co.* v. *Lueck*. The plaintiff in *Lueck* claimed that her employer had acted in bad faith in handling her claim for disability benefits provided by the union contract. The Wisconsin Supreme Court—much like the court of appeals in this case—"held that the 'specific violation of the labor contract, if there was one, is irrelevant to the issue of whether the defendants exercised bad faith in the manner in which they handled Lueck's claim.' " 471 U.S. at 214. In this case, the court reasoned that the critical question would "relat[e] to the conduct and motivation of the employer" (Pet. App. 13a), and not to whether the contract had been violated.

This Court unanimously rejected that reasoning in *Lueck*, and the court of appeals should have followed that precedent in this case. Because the right to disability benefits—like the right to accommodation of job-related handicaps in this case—derived from the collective bargaining agreement, questions as to the employer's conduct and motivation were not sufficiently independent of the contract to avoid §301 pre-emption.

Several other courts have considered the impact of *Lueck* and *Lingle* on state law claims relating to the motivation or state of mind with which employers or unions dealt with matters derived from collective bargaining agreements. See, *e.g.*, *Jackson* v. *Southern California Gas Co.*, 881 F.2d 638, 645-646 (9th Cir. 1989); *Douglas* v. *American Information Technologies Corp.*, 877 F.2d 565, 570-573 (7th Cir. 1989); *Johnson* v. *Anheuser Busch, Inc.*, 876 F.2d 620, 624 (8th Cir. 1989); *Newberry* v. *Pacific Racing Ass'n*, 854 F.2d 1142, 1148-1150 (9th Cir. 1988); *Nash* v. *AT & T Nassau Metals*, 381 S.E.2d 206, 208-210

(S.C. 1989). All of these cases held that claims alleging that an employer's conduct was outrageous or amounted to intentional infliction of emotional distress were pre-empted by §301. The Seventh Circuit's analysis in *Douglas* (877 F.2d 571-572) is typical:

> While the "extreme and outrageous" character of certain sorts of employer conduct may be evident without reference to the terms of a collective bargaining agreement, * * * the conduct that [the plaintiff] must prove to be "extreme and outrageous" in order to assert successfully her claim concerns directly the terms and conditions of employment. * * * [S]uch matters are governed by the collective bargaining agreement.

See also *Nash* v. *AT & T Nassau Metals*, 381 S.E.2d at 209-210 ("The crux of Nash's claim for outrageous conduct stems from an allegation that [his employer] deliberately and willfully set about a course of conduct to deprive him of his benefits and terminate his employment. * * * Because [the employer's] conduct in carrying out the agreement constitutes the core of this action, we do not believe a court can interpret the possible outrageousness of [the employer's] actions without examining the collective bargaining agreement").

Similarly, in this case Chrysler's state of mind (i.e., its motivation) cannot be interpreted without examining the UAW contract. The court of appeals' conclusion that Chrysler's state of mind is an independent issue and is thus not pre-empted by §301 directly conflicts with the decisions of the Seventh, Eighth and Ninth Circuits and the South Carolina Supreme Court that claims relating to an employer's state of mind in dealing with matters ultimately grounded in a union contract are pre-empted. This Court should grant the petition to resolve that conflict and to make it clear, as it held in *Lueck*, that such questions of motivation must be resolved under §301.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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